

EXHIBIT B

Original Transcript

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GABRIELE E. VERROCCHIO,

Plaintiff(s),

vs.

Index No.3:19-CV-01376

TJM-DEP FEDERAL EXPRESS
CORPORATION,

Defendant(s).

~~~~~

**DEPOSITION OF**

**ALAN C. WINSHIP**

January 6, 2011

10:09 a.m.

40 Gardenville Parkway  
Suite 200,  
West Seneca, New York 14224

DEBORAH DELELYS, Court Reporter and Notary Public



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Alan C. Winship

January 6, 2011

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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GABRIELE E. VERROCCHIO,

Plaintiff(s),

-against-

Index No.3:19-CV-01376

TJM-DEP FEDERAL EXPRESS CORPORATION,

Defendant(s).  
-----

DEPOSITION OF:

ALAN C. WINSHIP

HELD: THURSDAY, JANUARY 6, 2011

LOCATION: WEST SENECA, NEW YORK

REPORTED BY: DEBORAH DELELYS



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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF NEW YORK  
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5 GABRIELE E. VERROCCHIO,

6 Plaintiff(s),

7 -against-

8 Index No.3:19-CV-01376

9 TJM-DEP FEDERAL EXPRESS CORPORATION,

10 Defendant(s).  
11 -----

12 This is the DEPOSITION of ALAN C.  
13 WINSHIP herein, held at WINSHIP & ASSOCIATES,  
14 located at 40 GARDENVILLE PARKWAY, SUITE 200,  
15 WEST SENECA, NEW YORK 14224, commencing at 10:09  
16 A.M., on THURSDAY, JANUARY 6, 2011, before  
17 DEBORAH DELELYS, Court Reporter and Notary  
18 Public in and for the State of New York.  
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1  
2 APPEARANCES:

3  
4 FEYI O. GAJI, ESQ.  
36 Oak Street  
5 Binghamton, New York 13905  
Appearing for the Plaintiff  
6  
7

8  
9 FEDERAL EXPRESS CORPORATION  
LEGAL DEPARTMENT  
BY: SARAH F. HENRY, ESQ.  
10 3620 Hacks Cross Road  
Building B, 3rd Floor  
11 Memphis, Tennessee 38125-8800  
Appearing for the Defendant  
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A. Winship

THIS IS THE DEPOSITION of ALAN C. WINSHIP herein, on THURSDAY, JANUARY 6, 2011, before DEBORAH DELELYS, a Court Reporter and Notary Public in and for the State of New York.

\* \* \* \* \*

ALAN C. WINSHIP

called as the witness, hereinbefore named, being first duly cautioned and sworn or affirmed by DEBORAH DELELYS, the Court Reporter and Notary Public herein, to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY

MS. HENRY:

Q Would you please state your name for the record.

A Alan C. Winship.

Q Would you please state your address for the record.

A 40 Gardenville Parkway, Suite 200, West Seneca, New York 14224.

Q Mr. Winship, we're here on January the 6th of 2011, and you're here pursuant



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A. Winship

to Subpoena, correct?

A That's correct.

Q And the Subpoena instructed you to have all of the records and the documents that you relied on in generating your opinions in this case. Do you have those with you today?

A I do.

Q Okay. I noticed you have printed off a list of papers that I'm not familiar with. One of them obviously looks like your resume.

May I look at whatever documents you're holding?

A Sure. It's the two reports I've generated.

Q Have you made any changes to the reports that you generated between what you produced to Mr. Gaji in this case and what you're holding today?

A No.

Q If you wouldn't mind, since I've got a copy of those, I prefer to have you look at my copy just to be sure there



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A. Winship

are no discrepancies. I appreciate  
you printing off your own copy.

A Sure.

Q Just as a formal legal matter I'd  
rather you look at what I've been  
given just to make sure we're all on  
the same page.

A That's fine.

Q And understand, then, this deposition  
has been rescheduled twice. It was  
originally scheduled for December the  
1st and was cancelled due to discovery  
issues, is that your awareness?

A My understanding is it's been  
cancelled three times.

Q Okay. Was it scheduled before the  
December 1st date in your  
recollection?

A You know, I don't have all the dates  
in front of me.

Q Okay. Do you remember it being  
scheduled on December 1st and being  
cancelled?

A Yes.



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A. Winship

Q Okay. And do you remember it being  
rescheduled for December the 28th?

A Yes.

Q And you remember that one being  
cancelled due to weather constrictions  
on my part?

A Yes.

MS. HENRY: Okay. I'm  
go to pass you what is  
going to be marked as  
Exhibit 1.

(At which time, Exhibit 1, Copy of  
original Vocational Evaluation, was  
marked for identification.)

BY MS. HENRY:

Q Mr. Winship, you are being passed  
what's been marked Exhibit 1, which  
looks to be a copy of your report.  
Would you review that and verify that  
that is a copy of your original  
vocational evaluation.

A Yes, it is.

Q Okay. And the first sentence of your  
report says that you were, or you are



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A. Winship

rendering a vocational evaluation and  
opinion regarding Mr. Verrochio's  
earning capacity.

Is that what you intended to do with  
this vocational evaluation that you  
conducted?

A Yes.

Q Are these -- is this the only type of  
opinion that you were hired to render  
as an expert in this particular  
lawsuit?

A I was hired to render an opinion,  
that's a standard sentence in all of  
my reports. I was hired to render an  
opinion with regard to Mr.  
Verrochio's capacity for employment,  
and if he is employable to provide on  
opinion with regard to his earning  
capacity.

Q Okay. So you're not here today to  
render any legal opinions; is that  
correct?

A That's correct.

Q And what was provided to me for you,



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A. Winship

attached a copy of your resume, and I believe the last sheets of that Exhibit 1. If you wouldn't mind turning to the last four sheets, which should be your resume.

A Actually the resume's kind of stapled in with some other materials in my copy, it's not the last two pages. There's some vocational references after it.

Q Okay. So it's the last two pages?

A No, it's not.

Q I'm sorry. The second to last two pages?

A Yes. The vocational references just came apart, by those were the last two pages. My resume was the third and fourth last page.

Q Is your resume two pages long?

A Yes, it is.

Q Okay. Actually, if you'll keep them in a collective exhibit. I hate to be lawyerly with you, but it's a collective exhibit and the order. Are



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10

1 A. Winship

2 there any changes that need to be made  
3 to this resume that was produced?

4 A No.

5 Q Okay. Will you describe what your  
6 day-to-day practice is at Winship &  
7 Associates?

8 A Well, my day-to-day practices is  
9 fairly multi-faceted. I do some legal  
10 consulting such as this matter where I  
11 render an opinion on employability and  
12 earning capacity. I prepare life care  
13 plans in litigated cases. I do  
14 Medicare set-asides. I'm a licensed  
15 mental health counselor as well as a  
16 certified rehabilitation counselor.  
17 My practice consists of working with  
18 individuals who have multiple types of  
19 disabilities, physical learning  
20 disabilities, psychological  
21 impairments and assisting them with  
22 adjustment issues and looking into how  
23 their impairments effect their  
24 capacity for employment. We do  
25 testing. We do counseling. I provide



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A. Winship

case management services for the  
Veteran's Administration. I do what  
they call diagnostic vocational  
evaluations, which is a series of  
testing and career counseling with our  
state education department, so  
numerous types of things. With regard  
to my license in mental health I do  
counseling primarily with chronic pain  
population, anxiety adjustment issues,  
anger issues and so forth.

Q Okay. You also provided for this case  
the two pages in Exhibit 1, prior to  
your CVR, a list of cases that you  
have worked on within the last ten  
years?

A I did, yes.

Q Okay. And would you agree to provide  
the full name of all of these cases so  
they can be reviewed? I personally  
can't look these up with this one  
name. If you would agree to  
supplement the list of cases that you  
have testified in to include the full



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A. Winship

name and the docket number of the case as it was physically provided? Would you agree to do that at some later date?

A Well, quite frankly, I wouldn't even know how to begin to do that. I've never been asked for anything beyond what I've provided.

Q You wouldn't have any documents that would have what's called the style of the case, that would have both of the parties names?

A I don't. If there's a method -- perhaps Mr. Gaji could help me with that if there's a method of researching and looking it up, I'd be more than happy to.

Q Okay. On any of the -- were all of these cases in state court?

A The -- I believe the only one that isn't state court is the Bobak matter back in '06, which was a state court in Pennsylvania.

Q Okay. So it's a state court case,



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A. Winship  
just not in New York?  
A That's correct.  
Q The rest of the cases appear to be  
state court cases in New York?  
A That's correct.  
Q And what is the Raskin-Weber Jillian  
that says Court of Claims, is that  
state court as well?  
A That's a state court, yes.  
Q Okay. Were any of these cases  
Americans With Disabilities Act cases?  
A No.  
Q Okay. Have you ever testified or  
given expert testimony in Americans  
with Disabilities Act cases?  
A Beyond four years?  
Q Ever. I mean, this is a list of all  
the cases that you provided expert  
testimony in the past ten years,  
correct?  
A That's correct.  
Q And none of them are ADA cases,  
correct?  
A That's correct.



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January 6, 2011

14

1 A. Winship

2 Q So have you ever provided any  
3 testimony in an ADA case before this  
4 one that we're here for today?

5 A I would need to -- I don't have a  
6 record before that of the four-year  
7 period, I delete as they come across.  
8 I've been involved in ADA cases,  
9 whether any of them have gone to  
10 court, I don't know off the top of my  
11 head.

12 Q When you say a four-year period, are  
13 you taking about four years prior to  
14 this?

15 A No. I'm talking about my recollection  
16 before the four-year period noted on  
17 the letter.

18 Q Okay. So you're talking about the  
19 four-year period before this list of  
20 all the cases that -- for the previous  
21 ten years?

22 A Well, four-year or longer.

23 Q Okay. But it would be beyond the  
24 scope of this ten-year period that  
25 you've outlined in your letter,



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A. Winship

correct, is that what you're saying?

A Well, I only outlined a four-year period of cases that I testified on.

Q Okay. It says -- the first paper of -- you are correct. You're correct. I stand corrected. I saw the past ten years and this is the past four years. So you're saying that you don't have a recollection of any ADA cases in the past beyond this past four years?

A That I've testified on.

Q Okay. And would you agree to supplement that information to your attorney for this previous ten years?

MR. GAJI: I don't understand the question.

MS. HENRY: Let me rephrase. Will you agree to supplement the materials provided to include any ADA cases in which you have testified to in the past ten years?

MR. GAJI: Objection.



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January 6, 2011

16

1 A. Winship

2 MS. HENRY: Hat's your  
3 objection?

4 MR. GAJI: It's beyond  
5 the scope of FRCP.

6 BY MS. HENRY::

7 Q We'll put that to the magistrate then,  
8 but the request is on the table. Are  
9 you familiar with the legal standards  
10 under the Americans With Disabilities  
11 Act?

12 A I am.

13 Q Okay. And how are you familiar with  
14 the legal standards under the ADA?  
15 How did you become familiar with those  
16 standards?

17 A I've attended seminars pertaining to  
18 the ADA and I've done training  
19 pertaining to the ADA with employers.

20 Q Are you familiar with the term  
21 reasonable accommodation within the  
22 legal context of the Americans With  
23 Disabilities Act?

24 A I am.

25 Q Okay. And your knowledge, would that



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A. Winship

require an employer to change any of  
the essential functions of the  
position?

A It would not.

Q In your opinion, would that require an  
employer to create a new position for  
an employee that could no longer  
perform the essential functions of  
this previous position?

A It would not require that, no.

Q In your opinion, would the ADA require  
an employer to create a new job for a  
displaced employee?

A It would not require it, no.

Q Okay. As an employee -- in your  
opinion, is an employee required to  
request or ask for an accommodation?

A The accommodation is a dual -- it's a  
dialogue, it could be initiated by the  
employer or the employee.

Q Let me rephrase my question. Is an  
employee, in your opinion, required to  
request an accommodation under the  
ADA?



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January 6, 2011

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A. Winship

A Yes. The onus is on them.

Q What information in generating your report did you have about Federal Express's TRW or temporary return to work program?

A I don't know that there was anything in the records that I have with regard to the TRW program.

Q Okay. Are you aware that Mr. Verrochio was being examined to return to work not as an courier, but under FedEx's TRW program?

A I am.

Q And are you familiar with the essential functions of a courier at Federal Express?

A Yes.

Q Have you seen any documentation that describes the essential functions?

A No. I don't believe I have a job description.

Q Okay. Is it your intent to testify in this case, as to a legal opinion, as to whether FedEx complied with any of



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A. Winship

the ADA requirements?

A I think we've already discussed the fact that I'm not going to provide a legal opinion.

Q Okay. In your report -- do you need a minute?

A No. Go ahead.

Q On the first page of your report you say that you evaluated Mr. Verrochio on August the 26th of 2010; is that correct?

A Yes.

Q And when you said you evaluated him, what specifically did you do with Mr. Verrochio that day?

A I took a history from him and reviewed medical records and discussed the medical records.

Q Have you read Mr. Verrochio's deposition that was given in this case?

A I don't believe I have his deposition, no.

Q Have you read a deposition of a



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A. Winship

gentleman by the name of Steve  
Donnelly that was given in this case?

A No.

Q Have you spoken to anyone at Federal  
Express that was involved in this case  
at all other than myself today?

A No. I'm sure you're aware that I  
don't have authorization to speak with  
anybody at Federal Express.

Q How long would you estimate your  
evaluation of Mr. Verrochio was?

A In the neighborhood of three hours.

Q Did you perform any medical tests on  
him?

A No. I'm not a medical provider.

Q On page seven of your report, the  
second paragraph from the bottom,  
you're discussing Gary Williams' note  
that you reviewed in this case.  
And Mr. Williams' note says, in the  
first sentence in the paragraph,  
Mr. Williams' most recent  
correspondence is dated July 22nd,  
2010, at which time Dr. Williams



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A. Winship

noted, I reviewed the job descriptions which you've sent. I have not been able to locate this particular document.

Can you locate it in the files that you were given to review in this case, this particular document?

A (Witness indicating.)

MS. HENRY: And he has just shown me the letter from July 22, 2010, and it's a letter to Mr. Gaji from Dr. Gary Williams, and I'd like to make this Exhibit Number 2 to the deposition. We'll get a copy of it and give you your original back.

THE WITNESS: Sure.

From Mr. Gaji to Dr. Gary Williams, was marked for identification.)

BY MS. HENRY:

Q Mr. Winship, on page ten of your



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January 6, 2011

22

1 A. Winship

2 report under the employment history  
3 section, the first paragraph ends by  
4 saying, Mr. Verrochio's personnel file  
5 from FedEx was reviewed.

6 I'm going to pass you what has been  
7 produced to me by Mr. Gaji as  
8 represented to be the personnel  
9 records that were produced to you.

10 MR. GAJI: Which were  
11 produced by you to us.

12 MS. HENRY: Fine. If  
13 we could mark this as  
14 Exhibit 3 before I produce  
15 it to the witness.

16 (At which time, Exhibit 3, Mr.  
17 Verrochio's personnel file, was  
18 marked for identification.)

19 BY MS. HENRY:

20 Q If you will -- I realize it's a large  
21 amount of documents. If you would  
22 review that briefly and let me know if  
23 those appear to be the documents that  
24 you considered in evaluating Mr.  
25 Verrochio's personnel file for this



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A. Winship

report.

A Again, it appears to be. Again, it's, you know, my records and your records are both about two inches thick, so I would assume that they're consistent.

Q But those look familiar, like things that were given to you?

A Yes, certainly. The records would appear to be the same.

Q Okay. Thank you. On page eleven of your report, you have evaluated the job duties performed by a route delivery driver DOT-292.353-010. Where did you get this particular job duty?

A The --

MR. GAJI: Could you describe that again?

MS. HENRY: Can the court reporter read it back?

MR. GAJI: For the record, Mr. Kilker is here now.



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24

1 A. Winship

2 (Whereupon, the above-requested  
3 question was then read by the  
4 reporter.)

5 THE WITNESS: The  
6 dictionary of occupational  
7 titles.

8 BY MS. HENRY:

9 Q Did you have a copy of that particular  
10 occupational title from the dictionary  
11 here with you here today?

12 A A copy of it, no. I have a copy --  
13 the DOT is here.

14 Q Is this job stipulation in that DOT?

15 A Yes.

16 Q Okay. I would like to make a copy of  
17 that from the DOT, the fourth exhibit.  
18 We can file that exhibit. We'll get a  
19 copy of that and file it. The next  
20 sentence or the bottom sentence says  
21 exert force of twenty to fifty pounds  
22 occasionally, ten to twenty-five  
23 pounds frequently or up to ten pounds  
24 constantly. Is that something that  
25 you generated from this DOT title?



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A. Winship

A Yes. Everything listed under the transferable skills under the physical demands division, this whole section comes out of the DOT, it describes that job as it's performed generally in the economy, the national economy.

Q Okay. On page twelve of your report there's a table and the sentence above the table says, during the course of his past employment Mr. Verrochio has demonstrated the following aptitudes. Where did you generate his aptitudes and the percentile rank of these particular aptitudes for this report?

A The aptitudes and the temperament factors are also from the DOT or the classification of jobs.

Q And as a late filed exhibit, which would be Exhibit Number 5, I would like to have a copy of the documentation that you have included in your report from whatever source, I guess it's the DOT or classification to review that. It also says on page



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26

1 A. Winship

2 twelve that a transferable skills  
3 analysis was performed using the oasis  
4 transferable skills program, would you  
5 describe what that is to me, please?

6 A That is a computerized analysis of, in  
7 this case, the only occupation that  
8 Mr. Verrochio has performed within the  
9 past fifteen years, and it looks at  
10 what other occupations he may be able  
11 to perform using the type of skills  
12 and temperament factors and aptitudes  
13 that he's developed during the course  
14 of performing the semi-skilled  
15 delivery job.

16 Q And the next sentence says, Certain  
17 assumptions were made regarding  
18 Mr. Verrochio's residual functioning  
19 capacity and ability based on medical  
20 records reviewed and his past work  
21 history. Before I ask you about that  
22 particular question, I'm going to go  
23 ahead and get the rest of the  
24 information that you were provided  
25 made as an exhibit to the deposition.



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A. Winship

MS. HENRY: This next packet is entitled wage earnings and could I have this marked as Exhibit 6, please.

(At which time, Exhibit 6, Wage Earnings, was marked for identification.)

BY MS. HENRY:

Q And again, I'm going to ask you -- I'm going to produce to you what was produced to me as the information that was given to you as Mr. Verrochio's wage information from Federal Express. And if you would just briefly review that and see if that looks familiar and see if that looks like the information that you were provided in order to generate your opinions for this report.

A It does.

Q Okay. Thank you.

MS. HENRY: The next



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1                   A. Winship  
2                   exhibit is going to be  
3                   Exhibit 7, and this is a  
4                   packet of medical records  
5                   that was produced to me by  
6                   Mr. Gaji as a complete  
7                   packet of the medical  
8                   records that you were  
9                   given to review on Mr.  
10                  Verrochio in generating  
11                  your opinions in this  
12                  case.

13                  (AT which time, Exhibit 7,  
14                  Complete packet of Mr. Verrochio's  
15                  medical records, was marked for  
16                  identification.)

17                  MS. HENRY: This is  
18                  marked as Exhibit 7.

19                  And just for the  
20                  record, I'll go through.  
21                  One is the July 20, 2007  
22                  first choice evaluation  
23                  independent medical exam  
24                  by Dr. Kim.

25                  Mr. Gaji, there are a

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January 6, 2011

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A. Winship  
lot of these reports. Can  
we not stipulate that this  
is a copy of exactly what  
you sent me?

MR. GAJI: We just want  
to make sure that nothing  
is left out that may  
become a problem in the  
future.

MS. HENRY: Okay. I'll  
go through each one of  
them then. The next is  
the practitioner's report  
of an IME from a  
Dr. Arlene Snyder; the  
next is a practitioner's  
report of an independent  
medical exam from Dr.  
Belmonte; the next is a  
practitioner's report of a  
request for information or  
response to a request  
regarding an independent  
medical exam, looks like



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30

1           A. Winship  
2           it's Charles Rihanna; the  
3           next is a Tier Orthopedics  
4           Associates' report from  
5           6/23/2010; the next group  
6           of documents appears to be  
7           the reports from Tier  
8           Orthopedics Associates;  
9           the first is dated  
10          4/20/2010, the last is a  
11          report from Lourdes  
12          Diagnostic Imaging; the  
13          next group of documents is  
14          from Southern Tier Pain  
15          Management Center in  
16          Vestal, New York; the  
17          first document dated 6/7  
18          of 10, and they're grouped  
19          together. The next group  
20          of documents is from the  
21          Center for Pain Relief,  
22          date of visit 6/2/09,  
23          dictated by David  
24          Kammerman. The next  
25          packet of medical records



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31

1                   A. Winship  
2                   is from United Health  
3                   Services Medical  
4                   Rehabilitation, the  
5                   physician is Gary  
6                   Williams, it's a discharge  
7                   summary. And that is the  
8                   packet of medical  
9                   documentation that was  
10                  sent. There is other  
11                  documents there are going  
12                  to be made exhibits later  
13                  on, but this is the  
14                  medical records that were  
15                  sent to me by Mr. Gaji as  
16                  being the records that  
17                  were reviewed by Mr.  
18                  Winship for this  
19                  deposition.

20               MR. GAJI: I believe we  
21               also provided supplemental  
22               medical records.

23               MS. HENRY: You did,  
24               and that's exactly what we  
25               were just referencing that



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A. Winship

we would be getting to in  
a minute.

MR. GAJI: Okay. Thank  
you.

BY MS. HENRY:

Q All right. Back to your statement,  
certain assumptions were made  
regarding Mr. Verrochio's residual  
functioning capacity and the ability  
based on medical records reviewed and  
his past work history.

What assumptions did you make in  
rendering your opinion in this case?

A The assumptions were that  
Mr. Verrochio had performed the job  
that I had identified.

Q Which job is that?

A The sales route driver, and that he  
had performed it and met all the  
requisite specific vocational  
preparations pertaining to that job.

Q In the past?

A Yes. And there were two assumptions  
that I made relative to Mr.



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A. Winship

Verrochio's post-injury capacity. One was that he is not able to perform any type of work, and the other is that he is able to perform light duty work using mainly the right upper extremity.

Q Just so I'm understanding you, an assumption that you made, is that an assumption you made or is that a conclusion from your report, that he could not perform any gainful employment?

A Those were the assumptions that I made that led to my conclusion.

Q Okay. How did you come to that particular assumption?

A The review of the medical records.

Q Okay. And when you say that he can perform light duty work, that was an assumption that you made as well, is that what you said?

A I said that he is able to perform light duty work using predominantly the right upper extremity.



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January 6, 2011

34

A. Winship

Q And that would be -- that assumption would pertain to his status in September of 2007; is that correct?

A Correct.

Q Okay. Do you have any opinion -- well, actually on page fourteen of your report, the last paragraph says, in my professional opinion, Gabriele Verrochio is not capable of sustaining any gainful employment based on the exertional and non-exertional impairments that Mr. Verrochio continues to experience. Now, that is your conclusion from this report, correct?

A Correct.

Q And that is based on the assumptions that were made based on your review of the medical records up until that date, correct?

A That's correct.

Q Okay. And you also -- the last sentence says, Mr. Verrochio will not be capable of sustaining gainful



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A. Winship

employment in the future; is that correct?

A That's correct.

Q And that is your conclusion as well, correct?

A That's correct. That conclusion is relevant to the date that I provided this report, August 30th, 2010.

Q Okay. Do you have any opinions as to whether Mr. Verrochio was capable of lifting up to seventy-five pounds anytime between 2007 and the date of your report, August 30th, 2010?

A Without straying into the medical area, it would be fairly clear from my interpretation of the records that he was not able to lift seventy-five pounds.

Q Okay. Do you have an opinion based on review of the medical records of whether Mr. Verrochio would have the full range of motion in both of his arms at anytime between September 2007 and the date of your report, August



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A. Winship

30th, 2010?

A Full range of motion relative to what?

Q To driving a commercial vehicle.

A Yeah. I don't think that his range of motion would have precluded him from driving a vehicle.

Q The range of motion of both of his arms would not have precluded him from driving a commercial vehicle?

A No.

Q Are you familiar with the Department of Transportation requirements for driving a commercial vehicle?

A I am.

Q Okay. What kind of range of motion do they require in the arms?

A Specific range of motion measurement?

Q If you've got specific ones, that's great, otherwise what is your awareness?

A Well, you have to be able to hold the -- you have to be able to demonstrate the capacity to hold your hands on a steering wheel at ten o'clock and two



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A. Winship

o'clock position or a four o'clock and eight o'clock position.

Q Do the commercial vehicle driving requirements require any specific abilities with regards to shifting gears and turning and range of motion in that regard?

A Yes. Certainly you'd have to be able to obviously move your hands on the wheel and reach for the shifter, the gear shift.

Q Is that more strenuous than a regular vehicle?

A I guess it would depend on the vehicle you're driving. Most of the trucks now are power assist. The shifting is done with the right hand. He doesn't have an impairment with the right hand, his impairment is with the left. I'm sorry, he does have right shoulder impairment too.

Q Do you have an opinion whether Mr. Verrochio would qualify under the DOT standards to drive a commercial



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January 6, 2011

38

1 A. Winship

2 vehicle today?

3 A No, he would not.

4 Q Okay. But your opinion is that he  
5 could have at some point between  
6 September of 2007 and August 30th of  
7 2010?

8 A I don't recall stating that.

9 Q Okay. Well, let me ask you that  
10 question. Could Mr. Verrochio have  
11 qualified to drive a commercial  
12 vehicle at any point in time between  
13 September 2007 and August 30th of  
14 2010?

15 A By commercial vehicle, you're talking  
16 about a tractor-trailer truck?

17 Q I'm taking about --

18 A A commercial delivery truck?

19 Q A commercial delivery truck.

20 A No, he could not.

21 MS. HENRY: Okay. I'm  
22 going to pass you what has  
23 been provided to me as an  
24 addendum report and it  
25 will be Exhibit 8.



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A. Winship

(At which time, Exhibit 8,  
Addendum Report, was marked for  
identification.)

BY MS. HENRY:

Q Mr. Winship, if you will review this  
and let me know if in fact that is a  
copy of an addendum report that you  
generated in this case?

A It is.

Q And the date on this report is  
November 23rd, 2010; is that correct?

A That's correct.

Q And the first sentence says, at your  
request, and I assume you're speaking  
to Mr. Gaji, correct?

A That's correct.

Q At your request additional medical  
records and Social Security  
determination were reviewed. And just  
to be sure for the record, when you  
went through this report you outlined  
the review of the additional medical  
records you reviewed, and one of them,  
the first one, was November 1st 2010,



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A. Winship

a note from Dr. Angela Crawford; is that correct?

A Yes, it is.

Q And the second one on the second page is a note from November the 3rd, 2010 from Gary Williams; is that correct?

A Yes.

Q Okay. And a little further down the page it says, on November the 3rd, 2010 Matthew Bennett offered the follow opinion, and that's something you reviewed as well, correct?

A I did, yes.

Q Okay. The last paragraph on the page says, on November 11th, 2010 Dr. David Kammerman offered the following opinion; is that correct?

A Yes.

Q And then on page three, the last paragraph before the impression section, it says, I also reviewed a copy of the Social Security Administration decision of March the 26th, 2010 awarding Mr. Verrochio



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A. Winship

Social Security Disability benefits;  
is that correct?

A Yes, it is.

MS. HENRY: Okay. I'm  
now going to mark for the  
record what is going to be  
Exhibit 9 and it is for  
your benefit, Mr. Gaji and  
Mr. Kilker. It is a copy  
of the letter sent to me  
by Mr. Gaji, dated  
November 23rd, 2010, where  
it lists -- it says  
thirteen, but there are  
actually fourteen items  
that were produced in the  
packet that is the  
exhibit. I am only  
including numbers nine  
through fourteen because  
the additional medical  
records are something that  
was already marked in this  
case as Exhibit 7.



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January 6, 2011

42

1 A. Winship

2 (At which time, Exhibit 9, Copy of  
3 letter dated November 23, 2010 sent  
4 by Mr. Gaji, was marked for  
5 identification.)

6 BY MS. HENRY:

7 Q Mr. Winship, I'm going to give you  
8 that Exhibit 9 to review, and if you  
9 will look at the documentation that  
10 was provided to me and let me know if  
11 these are the medical records that you  
12 considered and described in your  
13 addendum report.

14 A They are.

15 Q Okay. Do you have a copy of what was  
16 supplied to you as the Social Security  
17 Administration decision of March 26th,  
18 2010?

19 A Yes.

20 Q Okay. May I ask you to get that out  
21 because I never received a copy of  
22 that from Mr. Gaji. Well, what we can  
23 do is make it a late filed exhibit and  
24 that will give you some time off the  
25 record to look for it if you need to.



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A. Winship

That would be Exhibit 10. And in generating this addendum report, are these records the only additional records that you considered in this report?

A Yes.

Q Okay. And does your opinion -- does this addendum report change your opinion as you previously testified to in this deposition about Mr. Verrochio?

A No.

MS. HENRY: Okay. I don't have any further questions.

MR. GAJI: Okay. Thank you.

MS. HENRY: We'll have these exhibits marked.

(At which time, Exhibit 4, DOT job description, was marked for identification.)

(At which time, Exhibit 5, Detailed job specialty report, was



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44

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marked for identification.)

(At which time, Exhibit 10, Copy  
of Social Security Administration  
decision dated March 26, 2010, was  
marked for identification.)

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January 6, 2011

46

C E R T I F I C A T E

STATE OF \_\_\_\_\_:

COUNTY/CITY OF \_\_\_\_\_:

Before me, this day, personally  
appeared Alan C. Winship, who, being duly sworn,  
states that the foregoing transcript of his/her  
Deposition, taken in the matter, on the date,  
and at the time and place set out on the title  
page hereof, constitutes a true and accurate  
transcript of said deposition.

\_\_\_\_\_  
Alan C. Winship

Signed and subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK



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Alan C. Winship

January 6, 2011

50

## I N D E X

## TO TESTIMONY

| WITNESS         | BY        | PAGE |
|-----------------|-----------|------|
| ALAN C. WINSHIP | MS. HENRY | 4    |

## TO EXHIBITS

| EXHIBIT | DESCRIPTION                                             | PAGE |
|---------|---------------------------------------------------------|------|
| 1       | Copy of original Vocational Evaluation                  | 7    |
| 2       | Letter from Mr. Gaji to Dr. Gary Williams               | 21   |
| 3       | Mr. Verrochio's personnel file                          | 22   |
| 4       | DOT job description                                     | 43   |
| 5       | Detailed job specialty report                           | 44   |
| 6       | Wage Earnings                                           | 27   |
| 7       | Complete packet of Mr. Verrochio's medical records      | 28   |
| 8       | Addendum Report                                         | 39   |
| 9       | Copy of letter dated November 23, 2010 sent by Mr. Gaji | 42   |



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Alan C. Winship

January 6, 2011

51

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15  
16  
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24  
25

TO EXHIBITS (cont'd)

| EXHIBIT | DESCRIPTION                                                                | PAGE |
|---------|----------------------------------------------------------------------------|------|
| 10      | Copy of Social Security<br>Administration decision<br>dated March 26, 2010 | 44   |



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Alan C. Winship

January 6, 2011

52

CERTIFICATE

I, DEBORAH DELELYS, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand.

  
DEBORAH DELELYS



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